Ontario

Building Materials Evaluation Commission

Commission d'évaluation des matériaux de construction

Building Materials Evaluation Commission

2008 – 2009 Annual Report

Ministry of Municipal Affairs and Housing

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TO THE LIEUTENANT GOVERNOR
OF THE PROVINCE OF ONTARIO

MAY IT PLEASE YOUR HONOUR:

For the information of Your Honour and the Legislative Assembly, we have the privilege of presenting the Annual Report of the Building Materials Evaluation Commission for the 2008-09 fiscal year.

Respectfully submitted,

The Honourable Jim Watson
Minister of Municipal Affairs and Housing

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Building Materials
Evaluation Commission

Commission d'évaluation
des matériaux
de construction

July 17, 2009

The Honourable Jim Watson
Minister of Municipal Affairs and Housing
777 Bay Street, 17th Floor
Toronto, Ontario
M5G 2E5

Dear Minister Watson:

Re: Building Materials Evaluation Commission
Annual Report – Fiscal year 2008 – 2009

It is my pleasure, as Chair of the Building Materials Evaluation Commission (BMEC), to present to you the BMEC Annual Report for the fiscal year ending March 31, 2009.

The enclosed Annual Report highlights the BMEC's accomplishments over the 2008 – 2009 fiscal period and outlines challenges that have been identified for the future. While the BMEC performed fairly well in terms of the timeliness of decisions, the target of 90 days was not achieved. During the 2008 – 2009 fiscal year, the BMEC made decision within 120 days of receiving an application in the majority of cases. In total, the BMEC received six new applications, issued five new authorizations and amended two existing authorizations. In addition, a number of Commission members were reappointed during 2008 enabling the BMEC to continue to effectively carry out its mandate.

I would like to thank my fellow Commission members whose knowledge and dedication have earned the BMEC an excellent reputation as a valuable service provider in the building and construction industry. On behalf of all members of the Commission, I would like to express our thanks to the staff of the Ministry of Municipal Affairs and Housing for their support to the BMEC. Without their excellent administrative, technical and legal assistance the BMEC simply could not function.

Sincerely,

Edward Link, P. Eng
Chair, Building Materials Evaluation Commission

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Building Materials Evaluation Commission
2008 - 2009 Annual Report

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Building Materials Evaluation Commission
2008 – 2009 Annual Report

A. MANDATE

The Building Materials Evaluation Commission (BMEC) is a regulatory agency whose legislative authority is set out in section 28 of the *Building Code Act, 1992* (BCA).

The BMEC has a mandate to evaluate and authorize, subject to conditions, any innovative building materials, systems or designs for use in construction in Ontario. In doing so, the BMEC has the power to conduct, or cause to be conducted, research, analysis and evaluation of such innovative materials, systems and designs. The BMEC is not a testing body, but may require that testing be carried out as part of its evaluation.

In addition, the BMEC also has the authority to make recommendations to the Minister respecting changes to the BCA or the Building Code.

Commitment to Service and Guiding Principles

The inaugural meeting of the BMEC was held on February 18th, 1976, shortly after the BCA came into effect. Since then - over a quarter century and more than 330 authorizations later - the BMEC has endeavoured to provide a timely, expert and transparent process for evaluating innovative materials, systems and designs. In doing so, the BMEC has earned a reputation of being an effective, useful and quality service provider within the construction industry.

As an agency authorized under the BCA, the BMEC exercises powers and performs duties in accordance with its mandate under that statute. The agency's regulatory activities and decisions must be made, and be seen by the public to be made, independently and impartially. The BMEC makes decisions at "arm's length" from the Ministry and the Government of Ontario.

The BMEC has a Memorandum of Understanding (MOU) with the Minister in exercising its mandate. The MOU sets out the relationship between the Commission, the Minister and the Ministry of Municipal Affairs and Housing with respect to the BMEC and the service it provides. The purpose of the MOU is to establish the responsibilities of these parties and to ensure that accountability is a fundamental principle that is observed in the management, administration and operations of the BMEC.

As an agency of government, the BMEC conducts itself according to the management principles of the government of Ontario. The Commission's proceedings are governed by the BCA, BMEC's Guidelines, Policies and Procedures Handbook and Treasury Board/Management Board of Cabinet directives. These principles and governance elements include ethical behavior, accountability, excellence in management, wise use of public funds, and high-quality service to the public by contributing to the health, safety, accessibility and energy efficiency of buildings in Ontario and by playing a positive role within Ontario's construction sector.

B. ABOUT THE BMEC

Authority of BMEC

The statutory authority for the BMEC is found in Section 28 of the BCA. This Section states that the BMEC may approve the use of innovative materials, systems or building designs in Ontario in respect of the "construction" of a "building" as defined in s.1(1) of the BCA. Examples of systems, materials or building designs which might be considered "innovative" for the purposes of s.28(4)(b) of the BCA are ones which are not mentioned in the Building Code or which are proposed as equivalents to the requirements of the Building Code. Materials, systems or building designs which might not be considered "innovative" for the purposes of s.28(4)(b) of the BCA are those for which the Building Code provides performance standards, as these materials, systems or building designs may simply require testing according to established test standards, and not an evaluation by the BMEC.

BMEC Process and Procedures

Upon receipt of an application, the Commission's Secretary ensures all prescribed information and documentation has been submitted. The Secretary enquires with the Canadian Construction Materials Centre (CCMC) as to whether they have examined or expressed an interest in examining a product, system or design. If CCMC has examined, or expressed an interest in examining a product, the BMEC may have no jurisdiction to carry out an evaluation, pursuant to the provisions of subsection 29.(8) of the BCA.

The BMEC, as a whole, is required to make decisions on applications, but subcommittees are usually established to carry out detailed evaluations. These subcommittees consist of Commission members who are familiar with, and/or expert in, the field of technology associated with the application. The BMEC may request comments from Ministry technical staff or other research or standards issuing bodies.

The number of evaluations conducted, and subsequent authorizations issued, are determined based on the volume of applications received. Typically, the BMEC holds one meeting each month, with approximately four to six subcommittee meetings in that same period. The issuance of decisions by the BMEC usually takes two to four months, depending on the complexity of the application and the additional information required of the applicants and the timeliness of their response.

Members and Staff

As of May 2009, the BMEC has 13 part-time members, which includes a Chair and a Vice-Chair. All members are appointed by Order in Council for initial two or three year terms. Effective September 1, 2006, the policy governing appointees to adjudicative and regulatory agencies was modified. Management Board developed a *Government Appointees Directive,* which included an increase to the length of term for appointees as well as an increase in remuneration. As a result, individuals appointed to the BMEC may now serve a combined term of appointment of up to 10 years. Commission members attend BMEC monthly meetings and subcommittee meetings and render decisions on applications. The Chair and Vice-Chair are also responsible for making administrative decisions regarding operations and relations with the Ministry.

The BMEC is provided with secretariat, technical and administrative support through the Ministry of Municipal Affairs and Housing's Building and Development Branch. Legal advice is provided through the Ministry's Legal Services Branch.

The BMEC's direct support staff consists of a 0.4 Full Time Equivalent (FTE) Coordinator, Building Innovation, 1.0 FTE Commission Secretary and a 0.4 FTE administrative assistant. Among other things, Commission staff are responsible for:

- case management of applications
- customer service/general enquiry response
- communicating with persons expressing an interest in applying to the BMEC for an authorization
- liaising with the applicant throughout the application process
- liaising with the technical staff of the Building and Development Branch to obtain their technical background information report
- carrying out directives from the BMEC

The Commission's Coordinator of Building Innovation is responsible for the overall administration and policy development for the BMEC. This involves:

- recommendations on appointments
- issues management
- business planning
- performance measurement
- monitoring of expenditures
- ensuring compliance with agency sector requirements and Treasury Board/Management Board of Cabinet directives

Caseload

The BMEC has received the following number of applications over the last five years:

Fiscal Year	New Applications	New Authorizations	Authorizations Amended
2004 – 2005	18	8	4
2005 – 2006	22	18	8
2006 – 2007	17	9	5
2007 - 2008	13	7	9
2008 - 2009	6	5	2

The rate of applications to the BMEC slightly decreased in 2007 - 2008 and a further decrease in application rate can be seen for the 2008 – 2009 fiscal year. While the number of applications may have decreased, the complexity of the applications has increased. In addition to the number of new applications noted above, the BMEC has also considered a number of requests for amendments to existing Authorizations. These applications for amendment are processed in much the same manner as a new application. Attention is given to the detailed nature of the proposed amendment as innovative products, systems and designs are modified and updated.

C. ANALYSIS OF BMEC PERFORMANCE

Performance Measures and Targets

The BMEC has adopted the recommendations for performance measurement established in 2000 by the Agency Reform (Guzzo) Commission. These are: fairness, accessibility, timeliness, quality and consistency, transparency, expertise, optimum cost, and courtesy. While not all of the goals were rated as "high" by the BMEC, there are processes in place to ensure that all goals are integrated into the BMEC's operation and are, therefore, adequately addressed. The chart below indicates the goals that the BMEC rated as "high". Performance measures based on these goals are found in Appendix 1.

Goals	Ranking
Fairness	**High**
Accessibility	Low
Timeliness	**High**
Quality and Consistency	**High**
Transparency	Medium
Expertise	**High**
Optimum Cost	Low
Courtesy	Medium

Several steps have been taken to enhance the BMEC's performance and accountability over the past several years, including incorporating performance measurement in the Ministry's business planning process and introducing BMEC-specific performance measures (Guzzo Report recommendations). The following is a sample of how the BMEC fared on some of its targets for its goals rated "high" in 2008 – 2009:

Fairness

- The stated target of no more than two complaints or judicial reviews was again met in the 2008 – 2009 fiscal year. Survey results for the 2008 – 2009 fiscal year indicate that 100% of clients surveyed agreed that they were treated fairly.

Timeliness

- The BMEC has set a target of three months from date of application to decision. In most years the BMEC has achieved this target; however, this target has not been achieved in the past two fiscal years. The BMEC made decisions within four months of receiving an application in the majority of files during this fiscal cycle.

Transparency

- Survey results of the parties that utilized the BMEC's services in the 2008 – 2009 fiscal year indicated that 100% of respondents felt that the processes and procedures were clear and understandable.

Expertise

- Survey results of the parties that utilized the BMEC's services in the 2008 – 2009 fiscal year indicated that 100% of respondents felt that members demonstrated an appropriate level of expertise regarding the technical matters under consideration.

Courtesy

- Survey results of the parties that utilized the BMEC's services in the 2008 – 2009 fiscal year indicated that 100% felt that they were treated with courtesy by Commission staff throughout the application process and 100% felt that they were treated with courtesy by the BMEC members.

The complete list of performance measures and survey results for the BMEC can be found in Appendix 1.

Operational Performance

The BMEC believes that in order to provide quality service to the public and the construction sector in particular, the BMEC, as an agency, must operate as effectively and efficiently as possible. This means more than having performance measures in place to strive for service excellence on a day-to-day basis. It also means pursuing excellence from an operational and administrative standpoint over the long term. In order to achieve this, the BMEC also assesses itself on its operational performance. As with the above performance measures, operational excellence ensures accountability. The following are some of the operational achievements from 2008 – 2009:

- During the 2008-2009 fiscal year, the terms of appointment for two current members were set to expire. The BMEC Chair and staff worked with the Minister's Office to reappoint these Members for additional terms. In addition, a new member with expertise in on-site sewage systems was appointed to the BMEC. With the reappointment of these two members and the appointment of the new member, the BMEC was operating with an ideal number of members. However, the appointment of additional members with expertise in plumbing and heating ventilation and air conditioning may be appropriate to ensure that the Commission membership reflects the full spectrum of technical disciplines necessary to make determinations on a variety of disputes. BMEC staff have committed to meeting a target of providing two months notice to the Minister's Office regarding the pending expiration of a member appointment.
- The BMEC is staffed by one full time Secretary and by an administrative assistant and the Coordinator of Building Innovation who represent 0.4 full time equivalents as their time is divided between the BMEC, the Building Code Commission (BCC), Minister's Rulings and Binding Interpretations. Staff resources remained consistent during the 2008 – 2009 fiscal year. It is expected that the BMEC will continue to effectively manage the increasingly complex applicant caseload and volume of application.
- Previously, the BMEC and the BCC surveyed their clients collectively. In the current fiscal year, the BMEC and BCC opted to survey their clients using separate surveys. The questions were the same for both Commissions, however, this approach of separating survey results may provide a more accurate account of individual Commission performance.

D. 2007-2008: The Year in Review

Authorizations

Each year, through the applications it receives, the BMEC is given the opportunity to review innovative materials, systems and building designs proposed for construction in the Province of Ontario and to consider important Building Code matters. The decisions on materials and recommendations made to the Minister regarding the Building Code are often significant, frequently impact the building sector in Ontario and are watched closely by industry stakeholders. The past two years were no exception with a great variety of innovative technologies being brought forward. The following Authorizations, ordered by date of approval starting with the most recent, were issued in fiscal year 2008 - 2009:

- BioDiffuser:ARC 18 Chamber System - Issued - August 7, 2008
- The Enviro-Septic System® - Issued - September 25, 2008
- Duraform Building Panels - Issued - January 29, 2009
- Sure Seal Model 2000 - Issued - January 29, 2009
- Aqua Safe and Aqua Aire® Area Bed Systems - Issued - April 30, 2009

Rehearing Resulting from Judicial Review – Update

Current Status:

The matter is currently before the courts on an action commenced by the Authorization Holders. The BMEC has taken no further action as of the commencement of the court action in July 2006.

Housekeeping Initiatives

In 2007, the BMEC launched two housekeeping initiatives in an effort to manage and keep current all existing Authorizations. The first exercise involved an attempt to contact each holder of a BMEC Authorization, dating back to 1976, to determine whether the Authorization Holder's contact information on file with the BMEC was up-to-date. Also, as part of this exercise, Authorization Holders were questioned whether they still manufactured the innovative product, system or building design listed in the BMEC Authorization and whether information relative to this product was current. Responses from this exercise are currently being tabulated and evaluated. Minor revisions to contact information will be made in due course. More significant amendments will be evaluated on a case by case basis.

A second housekeeping activity being undertaken by the BMEC has resulted from the filing of the new 2006 Building Code which came into force on December 31, 2006, subject to certain transition provisions. In particular, the 2006 Building Code in Sections 3.16. and Article 3.18.8.18. establishes requirements for both shelf and rack storage systems and window sprinkler systems, respectively. Previously, the design and installation of these systems was specified by the BMEC individual authorizations. As a result of the requirements for these

systems now being captured under the 2006 Building Code, the BMEC is considering what action to take with respect to its existing shelf and rack and window sprinkler system Authorizations. One of the actions being considered includes the revocation of the subject Authorizations in an effort to eliminate the redundancy of a BMEC Authorization where design and installation need only comply with the 2006 Building Code. All affected Authorization Holders have been asked to provide the BMEC with their comments. Comments will be compiled, considered and decisions will be made by the BMEC over the course of the next several months.

Both of these housekeeping initiatives are still ongoing as of the end of this fiscal cycle. It is hoped that finding some stability in staffing resources assigned to these projects will allow them to be completed as expeditiously as possible.

E. FUTURE ITEMS AND BMEC PLANNING

Listed below are certain challenges on the horizon facing the BMEC. In order to address challenges and improve client service delivery, the BMEC plans to undertake the following performance and operational initiatives in the fiscal year 2009 – 2010.

Performance Measures

Time Frames for Decisions on Applications

The stated time frame target for making a decision on an application within an average of three months (90 days) from receipt of application was not achieved during this fiscal year. It took an average of four months (120 days) for the BMEC to make a decision on an application, in most instances. While some decisions on applications may be made quickly because there are already existing Authorizations for similar technologies, which are used to guide consideration of subsequent applications, new and innovative technologies may require longer approval times because references need to be checked, additional testing is sometimes required, missing information may need to be supplied, etc. Despite the BMEC not achieving the target time frame during this reporting period, the BMEC proposes to maintain the three month time frame target for the 2009 – 2010 fiscal year.

The BMEC reviewed its guidelines, policies and procedures handbook. In November 2008, the BMEC finalized its review and adopted the revised guidelines, policies and procedures handbook. In reviewing and improving this document, the BMEC hopes to facilitate a more effective and efficient process for potential applicants. It is hoped that this exercise will improve the BMEC's performance and increase transparency in the process.

Operational Considerations

Annual Survey of Parties

The BMEC will continue to improve its annual survey of parties in fiscal year 2009– 2010. Additional questions may be posed in order to provide information regarding other key activities and to further track satisfaction in various areas of service delivery.

Members and Staff

The increasing complexity of applications, combined with recent changes in the legislative and regulatory environment, will continue to influence the need for appropriately skilled BMEC members and the capabilities of administrative support required by the BMEC.

New Member Appointments

Looking ahead to the summer of 2009, the terms of appointment for a number of current members will expire, including the Chair and Vice Chair. It is hoped that a majority of these members will seek an additional term of appointment with the BMEC. The BMEC Chair and staff will continue to work with the Minister's Office to monitor, and recommend improvements when necessary, the existing complement of BMEC expertise in the coming year. Appointment of additional members with expertise in plumbing and heating ventilation and air conditioning may be appropriate to ensure that the BMEC membership reflects the full spectrum of technical disciplines necessary for making decisions on

applications. BMEC staff have committed to meeting a target of providing two months notice to the Minister's Office regarding the pending expiration of a member appointment.

Succession planning represents another significant appointments-related issue. The Management Board *Government Appointees Directive* included an increase to the length of term for appointees; as a result, individuals appointed to the BMEC may now serve a combined term of appointment of up to 10 years. Looking ahead to 2012, the terms of appointment of a number of currently appointed members are set to expire. Many of these members may not be eligible to seek an additional term of appointment. The Commission Chair and staff will work with the Public Appointments Secretariat and the Minister's Office to seek candidates that are interested in appointment to the Commission.

Human Resources

The BMEC benefited from the stability of administrative and secretariat support during the 2008 – 2009 fiscal period. With the full staff complement, the BMEC is better able to manage the increasingly complex applicant caseload and volume of applications.

F. FINANCIAL REPORT

The BMEC does not operate on a cost recovery basis in order to encourage the development of new or innovative building materials by the construction industry and small entrepreneurs. In accordance with Division C, Article 2.3.2.1. of the Building Code, the BMEC charges $950 (plus GST) per application.

As part-time appointees, BMEC members receive remuneration in the form of a per diem as established by Treasury Board/Management Board of Cabinet. BMEC members are also reimbursed for out-of-pocket expenses associated with attending BMEC meetings in Toronto and elsewhere in the province, in accordance with Ministry of Municipal Affairs and Housing and Ontario Public Service Guidelines. Costs and expenses associated with BMEC activities, including operating costs and member per diems, form part of the overall budget for the Building and Development Branch of the Ministry of Municipal Affairs and Housing. The BMEC's application rate and/or complexity of issues directly impact the Branch's budget in support of BMEC activities.

Appendix 1

Building Materials Evaluation Commission: Performance Measures				
Outcomes	**Measures**	**Targets**	**2008 – 2009 Status**	**2009 – 2010 Commitments**
Fairness (processes and procedures that are fair and are seen to be fair)	Applicants are satisfied that the process was balanced, appropriate and fair	No more than 10% Of BMEC decisions should result in judicial review on an annual basis	No judicial reviews	Not more than 10% of BMEC decisions should result in judicial review on an annual basis
Timeliness (quick and careful evaluation of innovative construction materials, systems and designs)	a) Average number of months from receipt of application to decision/issuance of authorization b) Timely posting of final authorizations on BMEC internet site	a) Decisions made or authorization issued within an average of three months after the first BMEC meeting following receipt of a complete application b) Post 80% of final authorizations on the BMEC internet site within 10 working days of issuance	a) Decisions made or authorizations issued within an average of four months after the first BMEC meeting upon receipt of complete application. b) Final authorizations posted on the BMEC internet site within 10 working days for 80% of authorizations issued.	a) Decisions made or authorization issued within an average of three months after the first BMEC meeting following receipt of complete application b) Post 80% of final authorizations on the BMEC internet site within 10 working days of issuance
Quality and Consistency (process and procedures that have integrity and uniformity and are clear to all applicants)	Applicants are satisfied that the BMEC process and procedures are clear and were conducted with a high degree of quality and consistency	That 75% of applicants felt that the process and procedures were clear and had a high degree of quality and consistency	2008/09 Survey results of Commission clients show that 100% of respondents felt that the process and procedures were clear and had a high degree of quality and consistency	That 80% of applicants feel that the process and procedures are clear and had a high degree of quality and consistency
Expertise (Careful and sound Commission decisions made due to technical competence of members)	a) Applicants are satisfied that the BMEC members demonstrated an appropriate level of knowledge and technical competency b) Timely notice to the Minister's Office regarding upcoming commission member vacancies	a) That 75% of applicants felt that BMEC authorizations reflected a high degree of technical knowledge and expertise appropriate to the proposal b) Provide two months notice to the Minister's Office in advance of member's appointments expiring	a) 2008/09 Survey results of Commission clients show that 100% of responding parties were satisfied that members were experts b) The Minister's office was provided with two months notice in advance of member appointments expiring in the in fiscal year 2008/09.	a) That 85% of applicants feel that BMEC authorizations reflected a high degree of technical knowledge and expertise appropriate to the proposal b) Provide two months notice to the Minister's Office in advance of member's appointments expiring

Building Materials Evaluation Commission: Performance Measures				
Outcomes	**Measures**	**Targets**	**2008 – 2009 Status**	**2009 – 2010 Commitments**
Courtesy (polite and courteous treatment of all parties)	Parties are satisfied that they were treated with courtesy throughout the application and evaluation process	That 75% of parties surveyed felt that they were treated with courtesy throughout the application and evaluation process	2008/09 Survey results indicate that 100% of clients felt that they were treated with courtesy by Commission staff throughout the application process and 100% felt that they were treated with courtesy by the BMEC members.	That 90% of parties surveyed fell that they are treated with courtesy throughout the application and evaluation process

Appendix 2

Agency: *Building Materials Evaluation Commission*				
Commission Members	**Original Appointment Date**	**Expiry Date of Current Appointment**	**Area of Expertise/ Qualifications**	**Location**
Ed Link, Chair	July 5, 2004	June 29, 2009	*Chief Building Official – Consulting Engineer	Windsor
Gerald Genge, Vice - Chair	June 28, 2006	June 27, 2009	Consulting Engineer/building design specialist	Sutton West
Frank Wright	February 27, 2002	May 30, 2008	*MOE Official	Thunder Bay
Douglas Joy	May 29, 2002	May 30, 2008	Ph.D – soil hydrology	West Montrose
Judith Beauchamp	July 5, 2004	June 30, 2012	Civil Engineer – on-site sewage system specialist	Waterloo
Matthew Graham	July 5, 2004	June 30, 2012	Building Official – plumbing/sewage system expertise	Ottawa
Elizabeth Hilfrich	July 5, 2004	June 30, 2012	Building Code Consultant – P.Eng.	Kanata
Susan Reed Tanaka	July 5, 2004	June 30, 2012	Architect	Toronto
Susan Ing	May 30, 2006	May 29, 2009	Fire Official	Toronto
David Dykeman	May 30, 2006	May 29, 2009	Product Development Specialist	Oakville
Fred Barkhouse	June 22, 2006	June 21, 2009	Builder/Developer	Stittsville
Susan Tienhaara	June 30, 2006	June 29, 2009	Interior Designer	Moorefield
Doug Vergunst	June 25, 2008	June 24, 2010	Environmental Technician – sewage system expertise	Kenora

(Indicates former occupation and that member is retired)*